IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2915 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

BANK OF BARODA

Versus

PANDURANG G ABHANG

Appearance:

1. Special Civil Application No. 2915 of 2001

MR DARSHAN M PARIKH for Petitioner No. 1

MR YV SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 05/12/2001

ORAL JUDGEMENT

1. The petitioner, a nationalized bank, has preferred this petition under Articles 226 and 227 of the Constitution to challenge the award of the Industrial

Tribunal, Ahmedabad in Reference (ITC) No.110 of 1999 whereby the respondent-workman, a part-time peon-cum-sweeper, is ordered to be reinstated with full backwages.

2. The respondent-workman had approached the Tribunal with the demand and dispute that after his continuous service from 23.2.1996 to 1.7.1998, he was discharged from service by an oral order with the allegation and on the ground that the necessary qualification for holding the post was 7th Standard while the respondent had studied beyond 9th Standard. Thus, a case was sought to be made out on behalf of the petitioner that upon coming to know about the over-qualification of the respondent, he was discharged from service on account of his not having disclosed the true facts of his being over-qualified. It was also submitted that Section 25-F of the Industrial Disputes Act, 1947 did not apply in the facts of the case.

3. After appreciating the evidence on record, the Industrial Tribunal has recorded a finding of fact in the impugned award that although the respondent-workman was, in fact, possessing qualification higher than the maximum prescribed, there was no evidence whatsoever of the respondent having concealed that fact from the bank while being taken into service or subsequently. The bank had never taken any application for appointment in which there could have been any occasion of mentioning the qualification, nor was any information about his educational qualification ever called for from the respondent. It is also found that no appointment order was issued to the respondent and his appointment was based on his name being forwarded from the employment exchange. It is also found by the Tribunal that no show cause notice or chargesheet was ever served upon the respondent and, therefore, the termination of his service by way of punishment was in violation of the basic principles of natural justice and without giving any opportunity of being heard to the respondent.

4. It was sought to be argued and established by the learned counsel for the petitioner that the respondent was, in fact, over-qualified and, therefore, not eligible for being appointed on the post he was holding. A Circular No.76/373 of 1984 prescribing educational criteria in regard to recruitment of subordinate cadre was read out in which the educational criteria was prescribed as "should have passed Std.VII but should not have studied beyond Std. VIII"; and that criteria was clarified to mean that candidates should not have studied

beyond or passed 9th Standard. Therefore, what was established was that some irregularity was committed and the condition of the aforesaid Circular dated 29.8.1984 was violated when the respondent was appointed. However, that does not derogate from the fact that the charges of misrepresentation before the petitioner as levelled against the respondent were never put in the form of a chargesheet or proved either in the departmental enquiry or before the Industrial Tribunal. Therefore, the plea and the contention that the impugned award was perverse fails.

5. The learned counsel Mr.Parikh relied upon the judgment of the Supreme Court in KERALA SOLVENT EXTRACTIONS LTD. v. A. UNNIKRISHNAN [1994 I.LLJ 888] and particularly pointed out the observation as under:

> "7. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

In the facts of the above case, the proceedings related to empanellment of `badli' workman where one of the conditions for eligibility for appointment was that the educational qualification of the candidate should not be more than 8th standard. The respondent in that case produced a certificate issued by the school authorities to the effect that he had passed the 7th standard on 15.5.1974 to show that his qualifications were not more than the 8th standard. On receiving complaints that the workman had secured employment by suppression of truth and by false representation, the appellant had issued a

show cause notice to the respondent asking as to why action should not be taken against him under the standing orders and upon admission of the fact by the workman, his service was terminated for fraudulent misrepresentation. Apparently, the facts are altogether different in the case on hand and, therefore, the ratio of the above judgment is not applicable in the facts of this case.

It was further submitted by Mr.Parikh that the petitioner being a nationalized bank and a public institution and the termination of service of the respondent having been by way of discharge simpliciter, the award of full backwages was too harsh and not justified. He relied upon the judgment of a Division Bench of this Court N.A.VASAVA v. CHIEF REFINERY CO-ORDINATOR, INDIAN OIL CORPORATION LTD. [1997 (3) GLR 2397] wherein, after referring to the judgment of the Apex Court in SURJIT GHOSH v. CHAIRMAN & MANAGING DIRECTOR, UNITED COMMERCIAL BANK [AIR 1995 SC 1053], the following observation was extracted:-

> "...The bank is a nationalized bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the bank feels that it has lost confidence in the employee.."

On that basis, the employer was directed to reinstate the workman without arrears of salary for a period of five years. Adopting that analogy, the learned counsel submitted that, here in the facts of this case also, although no evidence could be brought on record to prove any alternate employment of the respondent, it would be reasonable to reduce the backwages by 50% on condition that the rest of the award shall be implemented within a period of two months. The learned counsel for the respondent Mr.Y.V.Shah was agreeable to that proposition.

6. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that the respondent shall be entitled to 50% of the backwages. The rest of the award shall remain intact. The petitioner-bank is directed to comply with the award within a period of two months from the receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs. Interim relief stands vacated.

Sd/-

05.12.2001 (D.H.Waghela, J.)

(KMG Thilake)